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MONTANA LEGISLATIVE HISTORY

Chapter 506 Session L 1987
Bill House _____ Senate 335

History and final status sheet X
Introduced bill X
Fiscal note X
Third reading bill X
Final version of bill X

House Committee on Taxation
Hearing date(s)* 3-26 4-3
Executive action (vote) date(s)* 4-3
Comm. Report 4-3
Floor 2nd reading & vote 4-7
Floor 3rd reading & vote 4-8

Senate Committee on Taxation
Hearing date(s)* 2-23
Executive action (vote) date(s)* 2-23
Comm. Report 2-23
Floor 2nd reading & vote 2-24
Floor 3rd reading & vote 2-25

Conference or Free Conference Comm. _____ Yes X No
Hearing date(s)* _____
Executive action (vote) date(s)* _____

* Includes minutes, exhibits, roll call, visitors register, and vote sheet if available.

Did this bill originate in an interim committee? _____ Yes X No
Committee _____ Report _____

NOTES: Allow Speedy District Court Determination of Preliminary Issue in Tax Case

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Compiled by: rg
Date: 3-16-2016

REPORT ADOPTED 49 1

HOUSE
4/14 CONFERENCE COMMITTEE APPOINTED
4/16 CONFERENCE COMMITTEE REPORT
4/20 2ND READING CONFERENCE COMMITTEE REPORT ADOPTED 85 11
4/21 3RD READING CONFERENCE COMMITTEE REPORT ADOPTED 84 15

4/23 SIGNED BY PRESIDENT
4/24 SIGNED BY SPEAKER

4/24 TRANSMITTED TO GOVERNOR
5/11 SIGNED BY GOVERNOR
CHAPTER NUMBER 636 EFFECTIVE DATE: 3/01/88

SB 332 INTRODUCED BY HAGER
EXCLUDE SOCIAL SECURITY AND TIER 1 RAILROAD RETIREMENT BENEFITS FROM STATE INCOME TAXATION

2/12 INTRODUCED
2/12 REFERRED TO TAXATION
2/12 FISCAL NOTE REQUESTED
2/17 FISCAL NOTE RECEIVED
2/23 HEARING
DIED IN COMMITTEE

SB 333 INTRODUCED BY CRIPPEN, RAMIREZ, FRITZ, ET AL.
"THE RETAIL SALES AND USE TAX ACT OF 1987"; IMPOSING A 5 PERCENT RETAIL SALES TAX

3/09 INTRODUCED
3/09 REFERRED TO TAXATION
3/09 FISCAL NOTE REQUESTED
3/11 HEARING
3/16 FISCAL NOTE RECEIVED
DIED IN COMMITTEE

SB 334 INTRODUCED BY GAGE, KEATING
REDUCING STATE GOVERNMENT OFFICE HOURS AND SALARIES OF CERTAIN STATE OFFICIALS

2/13 INTRODUCED
2/13 REFERRED TO STATE ADMINISTRATION
2/14 FISCAL NOTE REQUESTED
2/17 FISCAL NOTE RECEIVED
2/18 HEARING
2/20 TABLED IN COMMITTEE

SB 335 INTRODUCED BY MAZUREK, CRIPPEN, DEVLIN, ET AL.
ALLOW SPEEDY DISTRICT COURT DETERMINATION OF PRELIMINARY ISSUE IN TAX CASE

2/13 INTRODUCED
2/13 REFERRED TO TAXATION
2/14 FISCAL NOTE REQUESTED
2/23 HEARING
2/23 FISCAL NOTE RECEIVED
2/23 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/24 2ND READING PASSED 50 0
2/25 3RD READING PASSED 50 0

TRANSMITTED TO HOUSE

2

	3/03	REFERRED TO TAXATION		
	3/26	HEARING		
	4/03	COMMITTEE REPORT--BILL CONCURRED		
	4/07	2ND READING CONCURRED	93	0
	4/08	3RD READING CONCURRED	89	1
		RETURNED TO SENATE		
	4/10	SIGNED BY PRESIDENT		
	4/11	SIGNED BY SPEAKER		
	4/11	TRANSMITTED TO GOVERNOR		
	4/16	SIGNED BY GOVERNOR		
		CHAPTER NUMBER 506 EFFECTIVE DATE: 4/16/87		
SB 336	INTRODUCED BY MANNING			
	REVISE VIDEO POKER LICENSING LAW			
	2/14	INTRODUCED		
	2/14	REFERRED TO BUSINESS & INDUSTRY		
	2/14	FISCAL NOTE REQUESTED		
	2/19	HEARING		
	2/19	FISCAL NOTE RECEIVED		
	2/19	TABLED IN COMMITTEE		
SB 337	INTRODUCED BY MANNING, LYNCH, HARRINGTON, ET AL.			
	CLARIFY PROPERTY TAX EXEMPTION OF SURVIVING SPOUSE OF DISABLED VETERAN			
	2/14	INTRODUCED		
	2/14	REFERRED TO TAXATION		
	2/14	FISCAL NOTE REQUESTED		
	2/21	FISCAL NOTE RECEIVED		
	2/25	HEARING		
	3/02	COMMITTEE REPORT--BILL PASSED		
	3/04	2ND READING PASSED	50	0
	3/06	3RD READING PASSED	46	0
		TRANSMITTED TO HOUSE		
	3/09	REFERRED TO TAXATION		
	3/27	HEARING		
	4/06	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
	4/09	2ND READING CONCURRED	95	1
	4/10	3RD READING CONCURRED	94	0
		RETURNED TO SENATE WITH AMENDMENTS		
	4/15	2ND READING AMENDMENTS CONCURRED	50	0
	4/15	3RD READING AMENDMENTS CONCURRED	50	0
	4/17	SIGNED BY PRESIDENT		
	4/20	SIGNED BY SPEAKER		
	4/20	TRANSMITTED TO GOVERNOR		
	4/23	SIGNED BY GOVERNOR		
		CHAPTER NUMBER 594 EFFECTIVE DATE: 10/01/87		
SB 338	INTRODUCED BY BOYLAN, RAPP-SVRCEK, VINCENT, ET AL.			
	REGULATE TESTS OF BLOOD AND URINE OF EMPLOYEES AND PROSPECTIVE EMPLOYEES			
	2/14	INTRODUCED		
	2/14	REFERRED TO JUDICIARY		
	2/17	HEARING		
	2/21	COMMITTEE REPORT--BILL PASSED AS AMENDED		
	2/24	2ND READING PASSED	50	0
	2/25	3RD READING PASSED	50	0

CHAIRMAN--SEN. GEORGE MCCALLUM
NORMAL SCHEDULE==> SITE: ROOM 413/415 DAYS: MON THRU FRI TIME: 8:00 A.M.

SECRETARY-AGGIE HAMILTON

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0325 MCCALLUM, GEORGE	2/11	3/04	ALLOW REDUCTION FROM MARKET VALUE FOR DEPRECIATION WHEN BASED ON CONST. COST	DO PASS		3/6
SB0332 HAGER, TOM	2/12	2/23	3/9 EXCLUDE SOCIAL SECURITY & RR RETIREMENT BENEFITS FROM STATE INCOME TAXATION			
SB0333 CRIPPEN, BRUCE D.	3/09	3/11	"THE RETAIL SALES AND USE TAX ACT OF 1987"; IMPOSING A 5% RETAIL SALES TAX			
SB0335 MAZUREK, JOSEPH P.	2/13	2/23	ALLOW SPEEDY DISTRICT COURT DETERMINATION OF PRELIMINARY ISSUE IN TAX CASE	PASS AS AMENDED		2/23
SB0337 MANNING, RICHARD E.	2/14	2/25	CLARIFY PROPERTY TAX EXEMPTION OF SURVIVING SPOUSE OF DISABLED VETERAN	DO PASS		2/25
SB0340 SEVERSON, ELMER D.	2/14	2/25	3/3 ELIMINATE TAX ON PRODUCER-HELD GRAIN IN STORAGE, LIVESTOCK, AND POULTRY	PASS AS AMENDED		3/6
SB0342 MEYER, DARRYL	2/14	2/23	EXEMPT ARMED FORCES PENSION BENEFITS FROM ADJUSTED GROSS INCOME	ADVERSE REPORT		3/6
SB0346 ABRAMS, HUBERT J.	2/14	2/21	REVISE REFUND PROCEDURE FOR GAS TAX -- DELINQUENT PURCHASERS OF BULK FUEL	TABLED		2/21
SB0377 MCCALLUM, GEORGE	2/19	3/05	ALLOW REFUND OF 3 CENTS A GALLON ON FUEL USED BY SCHOOL BUS CONTRACTORS	DO PASS		3/5
SB0378 SMITH, ED B.	2/19	2/21	CLARIFYING STANDARD OF VALUE IN ASSESSING CERTAIN PROPERTY	DO PASS		2/21
SB0381 SEVERSON, ELMER D.	2/19	3/03	3/6, 3/13 PLACE A CAP ON REAL PROPERTY TAXES EQUIVALENT TO 1.5% OF MARKET VALUE			

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Senate BILL NO. 335

INTRODUCED BY Thomas Cap
Devin Ramirez

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SPEEDY RESOLUTION OF QUESTIONS OF LAW AND PROCEDURE PRESENTED IN TAX CASES APPEALED TO THE STATE TAX APPEAL BOARD FROM COUNTY TAX APPEAL BOARDS OR THE DEPARTMENT OF REVENUE; AMENDING SECTION 15-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, many questions arise in tax cases with respect to the validity of a constitutional provision, statute, or rule of the Department of Revenue or the State Tax Appeal Board prior to the time when the parties are ready for a hearing on the merits before the State Tax Appeal Board; and

WHEREAS, the section that allows for a petition for interlocutory adjudication of questions of law, section 15-2-304, MCA, provides for determination of legal questions by the District Court only in the event that both parties to the controversy, namely the taxpayer and the Department of Revenue, agree, and experience has shown that such agreement is rarely achieved in practice; and

WHEREAS, failure to determine questions of law and procedure at an early date often compels the taxpayer to submit to a costly, lengthy, and avoidable procedure before the State Tax Appeal Board, which also adds to the burden of cases pending before the State Tax Appeal Board, and early resolution of these issues might reduce the costs, save time, and reduce the burden on the State Tax Appeal Board.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the procedure for petitions involving interlocutory adjudication of questions of law and procedure by the District Court to reduce the expense and delay suffered by taxpayers, increase economy, and clarify the procedures now existing for the resolution of tax disputes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2-304, MCA, is amended to read:

"15-2-304. Petition for interlocutory adjudication. (1) (a) At the time of filing an appeal before the state tax appeal board, the taxpayer, in an appeal from a determination of the department of revenue, or either the taxpayer or the department, in an appeal from a decision of a county tax appeal board, may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

(i) in the first judicial district;

(ii) in the county in which the taxable property is located; or

INTRODUCED BILL
SB 335

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has his principal place of business in the state.

(b) The petition must raise all questions involving the interpretation of a constitutional provision, a statute, or a rule that exist at the time of filing the appeal with the state tax appeal board.

(2) After a proceeding has commenced before the state tax appeal board but before arguments have been heard, the parties to the proceeding may petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for such adjudication shall be signed by each party to the proceeding.

(3) ~~One~~ In a petition under subsection (1) or (2), one party shall be designated as the petitioner~~,~~ and every other party shall be designated a respondent. The court may in its discretion grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, a statute, or ~~regulation~~ a rule and do not require the hearing of evidence to be resolved and that the controversy would be more expeditiously resolved by such adjudication."

NEW SECTION. Section 2. Effective date. This act is effective on passage and approval.

NEW SECTION. Section 3. Applicability. This act

applies retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1984.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB335, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
An act to provide for speedy resolution of questions of law and procedure presented in tax cases appealed to the State Tax Appeal Board from county tax appeal boards or the Department of Revenue; amending Section 15-2-304, MCA; and providing an immediate effective date and a retroactive applicability date.

FISCAL IMPACT:
None.

David L. Hunter DATE 2/18/87
DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

DATE 2/21/87
JOE MAZUREK, PRIMARY SPONSOR

Fiscal Note for SB335, as introduced.

SB 335

MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

February 23, 1987

The thirtieth meeting of the Senate Taxation Committee was called to order at 8:00 A.M. on February 23, 1987 by Chairman George McCallum in Room 413/415 of the Capitol Building.

ROLL CALL: All committee members were present with the exception of Senator Hager.

CONSIDERATION OF SB 335: Senator Mazurek, Senate District 23, presented this bill to the committee. He said he introduced this bill at the request of a group of attorneys who regularly represent taxpayers on appearances before the State Tax Appeal Board. The present law, with respect to questions of law that arise in tax appeals, provides on page 3, subsection (2) that the only way that a question, which is purely a question of law, interpretation of the meaning of a provision of the constitution, statutes or administrative rules, can be made is if both parties agree to raise that question and take it to the district court. It has been the experience of those who frequently handle these matters that they seldom agree to take these matters to the court. This is purely a question of law and interpretation. We are not talking about questions as far as market value, those sorts of things. This bill is introduced to allow essentially if either party believes that there is a question involving the interpretation of a constitutional provision, a statute or a rule, that party may file with the district court a petition for interlocutory adjudication. This will get those questions of law before the court as soon as possible so that the taxpayer or the Department can avoid going through a lengthy hearing before the Tax Appeal Board. The bill provides for a retroactive effective date to allow for questions in the law on matters pending.

PROPONENTS: Ward Shanahan, representing Tax Lawyers Committee, gave testimony in support of this bill. A copy of his written statement is attached as Exhibit 1. He suggested amending the bill on page 2, line 16, by striking the language, "At the time of filing" and inserting, "Either party within 30 days of the filing of an answer to an appeal" and on line 17 starting with "the taxpayer", strike all language down to "tax appeal board" on line 20. Then on page 3, line 4, after "questions"

insert "relevant to the case" and on line 6, strike "at the time of filing" and insert the same language that he suggested being inserted on page 2, line 16. He is not sure where the applicability date came from, it is not in the proposal that he made. The new section on line 25, page 3 could be eliminated and the problem would be taken care of.

Dave Woodgerd, Department of Revenue, said those amendments would take care of the Department's concerns.

Tom Clary, attorney from Great Falls, stood in support of this bill by stating taxpayers could save a lot of legal fees if this bill is passed. He furnished the committee with a letter from Jardine, Stephenson, Blewett and Weaver, P.C., in support of this bill and attached as Exhibit 2.

John Alke, Montana/Dakota Utility Company, gave testimony in support of this bill. He is in agreement with the amendment suggested by Ward Shanahan to delete the new section (3).

Dennis Burr, Montana Taxpayers Association, gave testimony in support of this bill. He said anything that will speed up the appeal procedure is of benefit to the taxpayers and the state of Montana.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Crippen said if you strike the section (3) dealing with the retroactive date, how will that affect cases that are in the mill now that may have been heard by the County Tax Appeal Board and the decision has been returned and there hasn't been an appeal to the state. He asked Ward Shanahan to respond.

Ward Shanahan said it will not apply to those cases. The problem is most of the cases that are coming up and this would apply to those. Matters now pending are already complete and the answer has already been filed and they were stuck with the law as it stands now, where both parties would have to agree before a question.

Senator Crippen said the point is to resolve some of these matters before the State Tax Appeals Board.

Dave Woodgerd said the way it reads now it is meaningless because the petition has to be filed within 60 days after an answer is filed. All the cases going back, the answer has been filed long ago and it would not come under that. There would have to be additional language put in the bill so that we have a cut off date.

Senator Crippen asked if he would have any objection to doing that.

Dave Woodgerd said he does not think they do.

Ward Shanahan said you might make a provision "all pending actions, effective date of this act".

Senator Crippen said you are leaving a lot of area that is untouched.

Dave Woodgerd said he hasn't thought about this and he is not sure what the effect is on cases that have already been started. We are changing the rules of the game after we have done some battle under existing rules. He is not sure what the effect will be. He does not want to stand in the way of taxpayers who can use this procedure.

Senator Crippen said if it has been to the district court and back those questions have long been raised.

Dave Woodgerd would ask that language such as "if the question has already been raised with the district court, this procedure would not apply" be used.

Senator McCallum asked Senator Mazurek if most of these cases that were filed in 1982 would have already been decided.

Senator Mazurek said it is his understanding that there are a number of matters that haven't been decided. The way this would come up is if an audit is conducted and it is determined that there is additional tax due. The audit was done this year but it was for the years 1982, 1983 and 1984. That is an example of why the issue might be raised before the State Tax Appeal Board now.

Senator Mazurek closed.

CONSIDERATION OF SB 332: In the absence of Senator Hager, Senator Crippen presented this bill to the committee. He said this bill will exclude social security and tier 1 railroad retirement benefits from adjusted gross income in computing state individual income tax liability. He reviewed the changes in the bill with the committee. Senator Hager provided a tape recording of his presentation, in which he stated twenty-eight states, at this point, do not tax social security benefits. This bill would make Montana a better place for retired people to live.

PROPONENTS: None

Senator Crippen said it seems like we are making a distinction between armed forces pensions, which would be totally exempt, and the benefits received from federal retirement.

George Poston said a retired enlisted man with 30 years of service, would not make $20,000 in retirement funds. Granted a full Colonel or General would make more. His retirement pay is less than $17,000.

Senator Crippen asked how his pension is treated now.

Mr. Poston said we are allowed the $3600 exemption.

Senator Neuman asked if those federal retirements go up as inflation goes up.

George Poston said yes and sometimes they hold them back. It never meets the rate of inflation.

Senator Severson said this is an area that has always bothered him and it seems to him that somewhere along the line we should get to the point of treating everybody alike. There should be some uniformity.

Senator Crippen said the only way we are going to have equity is to either tax them all or exempt them all.

Hearing closed.

DISPOSITION OF SB 335: Senator Mazurek said he had presented amendments to the researcher which will insure that either party can request the question of law and the other changes would allow retroactive application and a 90 day grace period for any pending case.

Senator Neuman asked if he was concerned that this bill was a non-revenue bill.

Greg Petesch said under the rules this does not qualify as a revenue bill.

Senator Crippen said we have to assume, in view of the testimony given, that we are trying to help the system in tax appeals, reappraisals, whatever, and anything that we can do to speed up the process is beneficial to the Department and taxpayers.

Senator Mazurek reviewed the amendments, which are outlined on the standing committee report for SB 335, and which were discussed by Ward Shanahan.

Greg Petesch said the amendment would include a new applicability section. Section 3 would read "This act applies to all actions now pending before the State Tax Appeal Board, where there has been no previous district court action. Petitions may be filed within 90 days after notice from the State Tax Appeal Board of the petition. The board shall give notice to the parties in such cases, as soon as practicable after the effective date of this act."

Senator Mazurek said the reason for the notice being given is to allow people who do not follow the legislation to be able to utilize this.

Senator Eck said the title would need to be amended.

Senator Halligan said the way it is written, it only applies to pending appeal. Should we insure that it applies to future appeals.

Greg Petesch said the act, as written, would apply to future appeals and the new applicability section only applies to those that have already been filed.

Senator Mazurek would move the amendments, including the amendment to the title to provide "retroactive" on line 9, page 1 and inserting an applicability provision.

The motion carried.

Senator Mazurek made a motion that SB 335 DO PASS AS AMENDED. The motion carried.

FURTHER CONSIDERATION OF SB 342: Senator Meyer said that military pay is approximately 20% below the private sector and in looking at this bill he thinks that should be taken into consideration.

Senator Eck said some military men will retire from the military and then work for some years in the private sector. That retiree may have more than one retirement.

Senator Meyer said sometimes a retiree will work at a gas station or something like that. This bill will keep him going.

Senator Eck said she agreed but she also knows of some military retirees that receive over $45,000 and hold down another job.

TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 2-23-87

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR NEUMAN	✓		
SENATOR SEVERSON	✓		
SENATOR LYBECK	✓		
SENATOR HAGER			✓
SENATOR MAZUREK	✓		
SENATOR ECK	✓		
SENATOR BROWN	✓		
SENATOR HIRSCH	✓		
SENATOR BISHOP	✓		
SENATOR HALLIGAN, VICE CHAIRMAN	✓		
SENATOR McCALLUM, CHAIRMAN	✓		

Each day attach to minutes.

NAME: Ward A. Shanahan BILL NOL SB 335

ADDRESS: 301 First National Bank Building, Helena, MT

WHOM DO YOU REPRESENT: TAX LAWYERS COMMITTEE

SUPPORT

Mr. Chairman and Members of the Committee:

I have been a practicing lawyer in Helena for almost 29 years. During that period of time I have had a considerable amount of experience in representing clients before the old State Board of Equalization and the present Department of Revenue. I regularly represent clients with problems before County Tax Appeal Boards and the State Tax Appeal Board.

As most of you know, a county property tax case usually originates at the County Tax Appeal level and is appealed level to the State Tax Appeal Board. Centrally assessed property and corporation license tax cases originate before the Department of Revenue and a direct appeal to the State Tax Appeal Board is provided. Neither the County Tax Appeal Board nor the State Tax Appeal Board can make statutory interpretations or interpretations of administrative rules without a review by the District Court. In fact, Section 15-2-301, MCA, provides:

> The state tax appeal board <u>may not amend or repeal any administrative rule of the department</u>. The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful.

The present law, Section 15-2-304, MCA, provides for a petition for interlocutory adjudication. This is a petition to have the district court:

> <u>Make an interlocutory adjudication of an issue pending in the state tax appeal board if that issue involves only the interpretation of a constitutional provision, statute, or regulation</u> and does not require the hearing of evidence. (Section 15-2-305, MCA) (Emphasis added)

The problem with the existing statute is that a petition must be signed by each party to the proceeding. I have been confronted with situations many times where a

SENATE TAXATION
EXHIBIT NO. 1
DATE 2-23-87
BILL NO. SB335

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question of constitutional, statutory or regulatory interpretation needs to be decided, only to have the counsel for the Department of Revenue deny my request. At the present time, they have a statutory right to do this. However, I'm here to testify that they have never agreed with me, that such a petition could be filed.

Now the reason for this kind of petition is to clarify the law on a subject, so that the State Tax Appeal Board will know where it is going. Many times, the principal disagreement between the taxpayer and the Department of Revenue arises over a question of constitutional, statutory, or regulatory interpretation. In many cases, the case could be resolved if the legal question was resolved. The Department's refusal forces the taxpayer to stand the expense of a complete factual analysis of its problem before the State Tax Appeal Board. This involves unnecessary attorneys' fees and other expenses, and costly delays during which time interest is running on the tax liability.

It is clearly in the interest of the Department of Revenue to refuse these petitions for interlocutory adjudication. Counsel for the Department know that most taxpayers cannot afford the extra expense and the delay. Becuase of this, the taxpayer will usually "knuckle under" to the Department's view of the law, and pay the deficiency which the Department may have assessed against them. The practical affect is to defeat the intention of the Montana Constitution in Article VIII, Section 7:

> Tax Appeals. The legislature shall provide independent appeal procedures for taxpayer grievances about appraisals, assessment, equalization, and taxes. The legislature shall include a review procedure at the local government level.

The Department of Revenue has more resources and more determination than most taxpayers to see these tax cases through to the end and the "end" in most cases in my experience, is the Montana Supreme Court. It would be helpful if a clear determination of laws and regulations could be made well before the court of last resort.

I expect that the Department of Revenue might tell you in opposition to this bill, that the taxpayer could always bring a declaratory judgment action if he or she wanted the court to determine the question of law or interpret a statute or regulation. Unfortunately, the Uniform Declaratory Judgment Act in Montana, Section

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27-8-101, MCA, is not always appropriate in these cases. It involves an independent lawsuit for that purpose. In a tax case, there are often fact questions which cannot be properly determined until a question of law has been decided. It is certainly more appropriate, and certainly more inexpensive if this can all be done in one proceeding. The members of the State Tax Appeal Board are not lawyers and all of their legal rulings are subject to later review. Therefore, if they had a clear statement of the law before they considered the facts in a tax case, the taxpayer would be saved time and expense. The State Tax Appeal Board might also be able to make a more speedy resolution of the cases before it.

PLEASE GIVE SB 335 A DUE PASS RECOMMENDATION.

Respectfully,

Ward A. Shanahan
301 First National Bank Building
P.O. Box 1715
Helena, MT 59624
Tel: (406)442-8560

4238W

SENATE TAXATION
EXHIBIT NO. 1
DATE 2-23-87
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TRACY A. AXELBERG
JUDITH A. BARTRAM
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PHONE 727-5000
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ABA10033

February 20, 1987

Mr. George McCallum
Chairman
Senate Taxation Committee
Room 413-415
Capitol Building
Helena, Montana 59620

Re: Senate Bill 335

Dear Mr. McCallum:

Even though George McCabe and I are not able to attend the Committee hearing set for Monday, February 23, at which time Senate Bill 335 will be considered, we wish to express our strong support for passage of the Bill. For all of the reasons set forth in the Bill we support it. George McCabe and I are involved in a fair number of appeals before the State Tax Appeal Board, and situations have arisen where we have thought it appropriate to petition the District Court for rulings on questions of law. However, we have never been able to secure the approval of the Department of Revenue's attorneys to do the same. Because of this, speedy resolution of issues which might quickly decide all or a portion of a case is not possible, and the taxpayer is thus put to the task of preparing for and presenting his entire case, both factual and legal, at considerable time and expense. Likewise, the State Tax Appeal Board is burdened by having to hear the entire case when perhaps a legal ruling from a District Court could shorten the process considerably.

We do not feel that there is potential for abuse of the procedure outlined in Senate Bill 335, as the District Court Judge retains discretion whether to grant the petition or not.

Of course, the members of the State Tax Appeal Board are not attorneys and are more appropriately fact-finders. Thus, resolution of legal issues by a judicial body as opposed to a fact-finding body only makes sense.

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Re: Senate Bill 335

We would strongly urge your serious consideration and approval of Senate Bill 335. Thank you.

Very truly yours,

JARDINE, STEPHENSON, BLEWETT & WEAVER, P.C.

By Gary W. Gjelland

GWB:es

SENATE TAXATION
EXHIBIT NO. 2
DATE 2-23-87
BILL NO. SB 335

NAME: Tom Cherry DATE: 2

ADDRESS: P.O. Box 342 Great Falls MT 59403

PHONE: 406-727-3500

REPRESENTING WHOM? Tax Lawyers Committee

APPEARING ON WHICH PROPOSAL: 335

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: John Alle DATE: 2/93

ADDRESS: 406 Fuller Ave.

PHONE: 441 - 3690

REPRESENTING WHOM? MDY

APPEARING ON WHICH PROPOSAL: SB 335

DO YOU: SUPPORT? ✓ AMEND? ✓ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE Taxation COMMITTEE

BILL SB's-332, 335, 342 VISITORS' REGISTER DATE 2-23-81

Please note bill no.

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPO
EDWARD SHANAHAN	TAX LAWYERS COMMITTEE	335	X	
DICK HOY	SELF	342	✓	
Dave Woodward	MDR	335		
John Alt	MDA	335	✓	
Tim Cleary	Tax Lawyers Committee	335	✓	
George O. Poston	United Veterans Committee	342	✓	
Dennis Burr	MonTax	335	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

STANDING COMMITTEE REPORT

February 23 19 87

MR. PRESIDENT

We, your committee on SENATE TAXATION

having had under consideration SENATE BILL No. 335

first reading copy (white color)

ALLOW SPEEDY DISTRICT COURT DETERMINATION OF PRELIMINARY ISSUE ON TAX CASE

Respectfully report as follows: That SENATE BILL No. 335

be amended as follows:

1. Title, line 9.
Following: "AND"
Strike: "A RETROACTIVE"
Insert: "AN"
Following: "APPLICABILITY"
Strike: "DATE"
Insert: "PROVISION"

2. Page 2, line 16.
Following: "(a)"
Strike: "At the time of filing"
Insert: "Either party, within 30 days of the filing of an answer to"

3. Page 2, lines 17 through 20.
Following: "board," on line 17
Strike: remainder of line 17 through "board," on line 20.

4. Page 3, line 4.
Following: "questions"
Insert: "raised by the pleadings"

5. Page 3, line 6.
Following: "rule"
Strike: "that exist at the time of filing"
Insert: "within 30 days of filing an answer to"

~~DO PASS~~

~~DO NOT PASS~~

CONTINUED

Chairman.

22

February 23, 1987

6. Page 3, line 25.
Following: "Applicability"
Insert: "to pending actions--notice"
Following: "."
Strike: "This act"
Insert: "The right to petition for interlocutory adjudication"

7. Page 4, lines 1 and 2.
Following: "applies" on line 1
Strike: remainder of line 1 through "1984" on line 2
Insert: "to all actions pending before the state tax appeal board on [the effective date of this act], where there has been no previous district court action. Petitions under this section must be filed within 90 days after notice from the state tax appeal board of the right to petition. The state tax appeal board shall give notice of the right to petition for interlocutory adjudication to the parties in pending cases, as soon as practicable after [the effective date of this act]"

AND AS AMENDED

DO PASS

23

SENATOR GEORGE McCALLUM, Ch

2nd Reading - Committee of Whole 2-24-87

44th Legislative Day

Noes: Aklestad, Anderson, Beck, Bengtson, Boylan, Gage, Galt, Hager, Hammond, Harding, Hirsch, Keating, Kolstad, McLane, Meyer, Neuman, Smith, Story, Thayer, Tveit, Weeding.
Total 21

Excused: None.
Total 0

Absent or not voting: Jacobson, McCallum, Van Valkenburg, Williams, Mr. President.
Total 5

SB 335 - Senator Mazurek moved that SB 335 do pass. Motion carried as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Neuman, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 338 - Senator Boylan moved that SB 338 do pass. Motion carried as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Neuman, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 328 - Senator Mazurek moved that SB 328 be placed below SB 351. Motion carried.

SB 341 - Senator Keating moved that SB 341 do pass. Motion carried as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer,

24

3rd Reading

Senate

Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Neuman, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 328 passed as follows:

Ayes: Aklestad, Anderson, Beck, Bengtson, Bishop, Boylan, Brown, Crippen, Eck, Farrell, Galt, Hager, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McLane, Meyer, Neuman, Pinsoneault, Rasmussen, Severson, Smith, Story, Thayer, Tveit, Vaughn, Walker, Williams, Yellowtail.
Total 39

Noes: Abrams, Blaylock, Gage, Haffey, Halligan, McCallum, Regan, Stimatz, Van Valkenburg, Weeding, Mr. President.
Total 11

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 329 passed as follows:

Ayes: Bishop, Blaylock, Brown, Crippen, Eck, Farrell, Haffey, Halligan, Himsl, Hirsch, Jacobson, Jergeson, Lybeck, Lynch, Manning, Mazurek, Pinsoneault, Rasmussen, Regan, Severson, Stimatz, Van Valkenburg, Vaughn, Walker, Yellowtail, Mr. President.
Total 26

Noes: Abrams, Aklestad, Anderson, Beck, Bengtson, Boylan, Gage, Galt, Hager, Hammond, Harding, Hofman, Keating, Kolstad, McCallum, McLane, Meyer, Neuman, Smith, Story, Thayer, Tveit, Weeding, Williams.
Total 24

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 335 passed as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Neuman, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 50

25

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 338 passed as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Neuman, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 341 passed as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Williams, Yellowtail, Mr. President.
Total 48

Noes: Neuman, Weeding.
Total 2

Excused: None.
Total 0

Absent or not voting: None.
Total 0

SB 344 passed as follows:

Ayes: Abrams, Aklestad, Anderson, Beck, Bengtson, Bishop, Blaylock, Boylan, Brown, Crippen, Eck, Farrell, Gage, Galt, Haffey, Hager, Halligan, Hammond, Harding, Himsl, Hirsch, Hofman, Jacobson, Jergeson, Keating, Kolstad, Lybeck, Lynch, Manning, Mazurek, McCallum, McLane, Meyer, Neuman, Pinsoneault, Rasmussen, Regan, Severson, Smith, Stimatz, Story, Thayer, Tveit, Van Valkenburg, Vaughn, Walker, Weeding, Williams, Yellowtail, Mr. President.
Total 50

Noes: None.
Total 0

Excused: None.

24

STATUS SHEET

50th LEGISLATIVE SESSION

TAXATION COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON-SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON-CURRED IN DATE	BE NOT CON-CURRED IN DATE	BE CON-CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
272	3/3/87	3/25/87								4/8/87	
297	2/24/87	3/18/87							4/6/87		
325	3/13/87	3/30/87						4/6/87			
335	3/3/87	3/26/87						4/3/87			
337	3/9/87	3/27/87								4/6/87	
340	3/13/87	3/30/87								4/7/87	
377	3/12/87	3/26/87							4/7/87		
378	3/3/87	3/26/87	4/7/87	tabled							
383	3/17/87	4/03/87								4/8/87	
389	3/13/87	3/30/87								4/7/87	
390	3/17/87	4/03/87								4/10/87	

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

SENATE BILL NO. 335

INTRODUCED BY MAZUREK, CRIPPEN, DEVLIN, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SPEEDY RESOLUTION OF QUESTIONS OF LAW AND PROCEDURE PRESENTED IN TAX CASES APPEALED TO THE STATE TAX APPEAL BOARD FROM COUNTY TAX APPEAL BOARDS OR THE DEPARTMENT OF REVENUE; AMENDING SECTION 15-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND ~~A RETROACTIVE~~ AN APPLICABILITY ~~DATE~~ PROVISION."

WHEREAS, many questions arise in tax cases with respect to the validity of a constitutional provision, statute, or rule of the Department of Revenue or the State Tax Appeal Board prior to the time when the parties are ready for a hearing on the merits before the State Tax Appeal Board; and

WHEREAS, the section that allows for a petition for interlocutory adjudication of questions of law, section 15-2-304, MCA, provides for determination of legal questions by the District Court only in the event that both parties to the controversy, namely the taxpayer and the Department of Revenue, agree, and experience has shown that such agreement is rarely achieved in practice; and

WHEREAS, failure to determine questions of law and procedure at an early date often compels the taxpayer to submit to a costly, lengthy, and avoidable procedure before the State Tax Appeal Board, which also adds to the burden of cases pending before the State Tax Appeal Board, and early resolution of these issues might reduce the costs, save time, and reduce the burden on the State Tax Appeal Board.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the procedure for petitions involving interlocutory adjudication of questions of law and procedure by the District Court to reduce the expense and delay suffered by taxpayers, increase economy, and clarify the procedures now existing for the resolution of tax disputes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2-304, MCA, is amended to read:

"15-2-304. Petition for interlocutory adjudication. (1) (a) ~~At the time of filing~~ EITHER PARTY, WITHIN 30 DAYS OF THE FILING OF AN ANSWER TO an appeal before the state tax appeal board, ~~the taxpayer, in an appeal from a determination of the department of revenue, or either the taxpayer or the department, in an appeal from a decision of a county tax appeal board,~~ may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

(i) in the first judicial district;

(ii) in the county in which the taxable property is

Montana Legislative Council

THIRD READING

located; or

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has his principal place of business in the state.

(b) The petition must raise all questions RAISED BY THE PLEADINGS involving the interpretation of a constitutional provision, a statute, or a rule ~~that exist at the time of filing~~ WITHIN 30 DAYS OF FILING AN ANSWER TO the appeal with the state tax appeal board.

(2) After a proceeding has commenced before the state tax appeal board but before arguments have been heard, the parties to the proceeding may petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for such adjudication shall be signed by each party to the proceeding.

(3) ~~One~~ In a petition under subsection (1) or (2), one party shall be designated as the petitioner~~,~~ and every other party shall be designated a respondent. The court may in its discretion grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, a statute, or ~~regulation~~ a rule and do not require the hearing of evidence to be resolved and that the controversy would be more expeditiously resolved by such adjudication."

NEW SECTION. Section 2. Effective date. This act is

effective on passage and approval.

NEW SECTION. Section 3. Applicability TO PENDING ACTIONS -- NOTICE. ~~This act~~ THE RIGHT TO PETITION FOR INTERLOCUTORY ADJUDICATION applies ~~retroactively, within the meaning of 1-2-109, to taxable years beginning after December 31, 1984~~ TO ALL ACTIONS PENDING BEFORE THE STATE TAX APPEAL BOARD ON [THE EFFECTIVE DATE OF THIS ACT], WHERE THERE HAS BEEN NO PREVIOUS DISTRICT COURT ACTION. PETITIONS UNDER THIS SECTION MUST BE FILED WITHIN 90 DAYS AFTER NOTICE FROM THE STATE TAX APPEAL BOARD OF THE RIGHT TO PETITION. THE STATE TAX APPEAL BOARD SHALL GIVE NOTICE OF THE RIGHT TO PETITION FOR INTERLOCUTORY ADJUDICATION TO THE PARTIES IN PENDING CASES, AS SOON AS PRACTICABLE AFTER [THE EFFECTIVE DATE OF THIS ACT].

-End-

MINUTES OF THE MEETING
TAXATION COMMITTEE
HOUSE OF REPRESENTATIVES
50TH LEGISLATIVE SESSION

March 26, 1987

The meeting of the Taxation Committee was called to order by Chairman Ramirez on March 26, 1987, at 8 a.m. in Room 312B of the State Capitol.

ROLL CALL: All members of the Committee were present, except Rep. Harp, who was excused. Also present was Dave Bohyer, Researcher, Legislative Council.

CONSIDERATION OF SENATE BILL NO. 377: Sen. Mike Halligan, Senate District #26, sponsor of SB 377, said the bill is a policy for a one time only exemption in the fuels tax for school bus contractors.

PROPONENTS OF SENATE BILL NO. 377: Sen. Bob Brown, Senate District #2, said the bill is appropriate under the circumstances and that the Superintendent of Public Instruction supports the bill.

OPPONENTS OF SENATE BILL NO. 377: There were no opponents of SB 377.

QUESTIONS ON SENATE BILL NO. 377: Rep. Williams advised that school budgets would be coming up next year, and asked how the exemption would be handled.

CLOSING ON SENATE BILL NO. 377: Sen. Halligan stated contracts would show specific mileage and could be made available to DOR.

CONSIDERATION OF SENATE BILL NO. 179: Sen. Tom Beck, Senate District #24, sponsor of the bill, said it would eliminate proration of motor vehicle fees with the exception of those with a fee in lieu of taxes.

PROPONENTS OF SENATE BILL NO. 179: Larry Majerus, Administrator, Motor Vehicle Division, Department of Justice, said the bill was requested as a result of the Legislative Auditors' report on county collections, wherein it was discovered that the 50 cent junk vehicle fee was not prorated correctly much of the time. He explained it is easier to eliminate proration of the fee, than to correct county treasurer errors, and that the bill would also apply to noxious seed fees.

CONSIDERATION OF SENATE BILL NO. 355: Sen. Joe Mazurek, Senate District #23, sponsor of the bill, said it was introduced at the request of attorneys who appear before the State Tax Appeals Board (STAB). He stated the bill would amend 15-3-304, MCA, and that tax appeals are clearly a legal issue that can be taken before the district court for interpretation, or on issues of administrative rules, as well as being taken before STAB.

Sen. Mazurek said the bill would require that all legal issues be brought at the time of petition, to the district court, within 90 days of the passage of the bill.

PROPONENTS OF SENATE BILL NO. 335: Ward Shanahan, Chairman of the Tax Lawyers Legislation Committee, said he had about 17 cases before STAB now. He explained that many issues could be disposed of on a legal basis, but STAB can't challenge them unless the issue is "clearly on its face".

John Alke, Montana-Dakota Utilities, stated his support of the bill.

OPPONENTS OF SENATE BILL NO. 335: There were no opponents of the bill.

TECHNICAL COMMENTS ON SENATE BILL NO. 335: Dave Woodyard, Chief Legal Counsel, DOR, said the amendments were worked out in the Senate and that he had no problems with the bill.

QUESTIONS ON SENATE BILL NO. 335: Rep. Williams asked who would make the "legal" determination. Sen. Mazurek replied that either the district court or the Supreme Court would do so, and that the problem is, right now, both sides won't agree to go to court.

Chairman Ramirez asked if this bill were a short-cut to the courts.

Rep. Ellison asked if both the state and appellants would be ahead in many instances. Sen. Mazurek replied they would be.

CLOSING ON SENATE BILL NO. 335: Sen. Mazurek thanked the Committee for their time and consideration of the bill.

CONSIDERATION OF SENATE BILL NO. 162: Sen. Joe Mazurek, Senate District #23, sponsor of SB 162, said the Revenue Oversight Committee undertook the study of delinquent taxes and the tax deeding process, in conjunction with the county treasurers, MACO, MonTax, and others, to determine what

DAILY ROLL CALL

HOUSE TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 6, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. RAMIREZ	✓		
REP. ASAY	✓		
REP. ELLISON	✓		
REP. GILBERT	✓		
REP. HANSON	✓		
REP. HARP		✓	
REP. HARRINGTON	✓		
REP. HOFFMAN	✓		
REP. KEENAN	✓		
REP. KOEHNKE	✓		
REP. PATTERSON	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. SANDS	✓		
REP. SCHYE	✓		
REP. WILLIAMS	✓		

CS-30

MINUTES OF THE MEETING
TAXATION COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

APRIL 3, 1987

The meeting of the House Taxation Committee was called to order at 8:05 a.m. on April 3, 1987 in room 312B of the State Capitol by Chairman Jack Ramirez.

ROLL CALL: All members were present, except Rep. Gilbert who was excused.

DISPOSITION OF SENATE BILL 335:

Rep. Williams made a motion that Senate Bill 335 BE CONCURRED IN. The motion CARRIED unanimously.

CONSIDERATION OF SENATE BILL 390:

AN ACT TO REVISE THE PROPERTY TAX ASSESSMENT OF PARCELS OF LAND 20 ACRES OR MORE IN SIZE AND ELIMINATE CLASS NINETEEN FOR PROPERTY ASSESSMENT PURPOSES, ETC.

Sen. George McCallum, Senate District #26, sponsor of SB 390, said the bill changes the eligibility of land for valuation as agricultural property when there is a change in ownership or the property is reappraised under 15-7-111, MCA. He advised this legislation applies retroactively to the taxable year beginning on January 1, 1987, for property meeting the definition of commercial parcels. Sen. McCallum explained that properties under the residential definition will not be affected until January 1, 1988.

PROPONENTS OF SENATE BILL 390:

Gregg Groepper, Administrator, Property Assessment Division, Department of Revenue, stated that to qualify for the agricultural definition, land would have to meet the $1,500 income test. He said the bill ensures that commercial property owned by industrial concerns would meet that income requirement in order to be classified as agricultural. Mr. Groepper advised that the legislation grandfathers agricultural property that would not be reclassified until it is sold. He went on to explain that after sale, the land would be reclassified at its market value unless it could be shown that the owner is able to generate $1,500 income through raising and marketing an agricultural product.

OPPONENTS OF SENATE BILL NO. 390:

DAILY ROLL CALL

HOUSE TAXATION COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date [illegible]

NAME	PRESENT	ABSENT	EXCUSED
REP. RAMIREZ	✓		
REP. ASAY	✓		
REP. ELLISON	✓		
REP. GILBERT			✓
REP. HANSON	✓		
REP. HARP	✓		
REP. HARRINGTON	✓		
REP. HOFFMAN	✓		
REP. KEENAN	✓		
REP. KOEHNKE	✓		
REP. PATTERSON	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. SANDS	✓		
REP. SCHYE	✓		
REP. WILLIAMS	✓		

CS-30

STANDING COMMITTEE REPORT

APRIL 3 19 87

Mr. Speaker: We, the committee on HOUSE TAXATION

report SENATE BILL NO. 335

☐ do pass
☐ do not pass

☑ be concurred in
☐ be not concurred in

☐ as amended
☐ statement of intent attached

Representative Jack Ramirez, Chairman

THIRD reading copy (BLUE)
color

35

2nd Reading - Committee of Whole
77th Legislative Day

Pistoria, Poff, Quilici, Ramirez, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sands, Schye, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Swysgood, Thoft, Thomas, Vincent, Whalen, Williams.
Total 80

Noes: Devlin, Ellison, Giacometto, Hanson, Hoffman, Menke, Sales, Switzer, Wallin, Mr. Speaker.
Total 10

Excused: Addy, Campbell, Hannah, Moore, Raney, Winslow.
Total 6

Absent or not voting: Nathe, Peterson, Poulsen, Simon.
Total 4

SB 335 - Representative Ramirez moved that SB 335 be concurred in. Motion carried as follows:

Ayes: Asay, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Cobb, Cody, Cohen, Compton, Connelly, Corne', Daily, Darko, DeMars, Devlin, Donaldson, Driscoll, Ellison, Eudaily, Fritz, Giacometto, Gilbert, Glaser, Gould, Grady, Grinde, Hansen, Hanson, Harp, Harper, Harrington, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Meyers, Miles, Miller, Nelson, Nisbet, O'Connell, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Poulsen, Quilici, Ramirez, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Switzer, Swysgood, Thoft, Thomas, Vincent, Wallin, Whalen, Williams, Mr. Speaker.
Total 93

Noes: None.
Total 0

Excused: Addy, Campbell, Hannah, Moore, Raney, Winslow.
Total 6

Absent or not voting: Nathe.
Total 1

Representative Raney present at this time.

HB 471 - Representative Darko moved that the free conference committee report on HB 471 be adopted. Motion carried as follows:

Ayes: Asay, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Cobb, Cody, Compton, Connelly, Corne', Daily, Darko, DeMars, Devlin, Donaldson, Driscoll, Ellison, Eudaily, Fritz, Giacometto, Gilbert, Glaser, Gould, Grady, Grinde, Hansen, Hanson, Harp, Harper, Harrington, Hayne, Hoffman, Holliday, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Meyers, Miles, Miller, Nelson, Nisbet, O'Connell, Patterson, Pavlovich, Peck, Peterson, Phillips, Pistoria, Poff, Poulsen, Quilici, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Swysgood, Thoft, Thomas, Vincent, Wallin, Williams, Mr. Speaker.
Total 89

Noes: Cohen, Sales, Switzer, Whalen.
Total 4

34

3rd Reading - House

HJR 48 passed as follows:

Ayes: Addy, Asay, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Cobb, Cody, Cohen, Compton, Connelly, Corne', Darko, DeMars, Devlin, Donaldson, Driscoll, Eudaily, Fritz, Giacometto, Gilbert, Gould, Grinde, Hansen, Hanson, Harp, Harper, Harrington, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Meyers, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Peck, Peterson, Phillips, Poff, Poulsen, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Swysgood, Thoft, Thomas, Vincent, Wallin, Whalen, Williams, Winslow, Mr. Speaker.
Total 89

Noes: Ellison, Switzer.
Total 2

Excused: Campbell, Daily, Glaser, Grady, Hannah, Moore, Pavlovich, Pistoria, Quilici.
Total 9

Absent or not voting: None.
Total 0

HJR 49 passed as follows:

Ayes: Addy, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Cobb, Cohen, Compton, Connelly, Corne', Darko, DeMars, Donaldson, Driscoll, Eudaily, Fritz, Gilbert, Gould, Grinde, Hansen, Harp, Harper, Harrington, Hayne, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Mercer, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Peck, Phillips, Poff, Poulsen, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Strizich, Swift, Swysgood, Thoft, Thomas, Vincent, Whalen, Williams, Winslow.
Total 76

Noes: Asay, Cody, Devlin, Ellison, Giacometto, Hanson, Hoffman, Menke, Meyers, Sales, Stratford, Switzer, Wallin, Mr. Speaker.
Total 14

Excused: Campbell, Daily, Glaser, Grady, Hannah, Moore, Pavlovich, Pistoria, Quilici.
Total 9

Absent or not voting: Peterson.
Total 1

SB 335 concurred in as follows:

Ayes: Addy, Asay, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Cobb, Cody, Cohen, Compton, Connelly, Corne', Darko, DeMars, Devlin, Donaldson, Driscoll, Ellison, Eudaily, Fritz, Giacometto, Gilbert, Gould, Grinde, Hansen, Hanson, Harp, Harper, Harrington, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Peck, Peterson, Phillips, Poff, Poulsen, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Swysgood, Thoft, Thomas, Vincent, Wallin, Whalen, Williams, Winslow, Mr. Speaker.

37

Total 89

Noes: Meyers.
Total 1

Excused: Campbell, Daily, Glaser, Grady, Hannah, Moore, Pavlovich, Pistoria, Quilici.
Total 9

Absent or not voting: Switzer.
Total 1

HB 5, Senate amendments, concurred in as follows:

Ayes: Addy, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Cody, Cohen, Compton, Connelly, Corne', Darko, DeMars, Devlin, Donaldson, Driscoll, Ellison, Eudaily, Fritz, Gilbert, Gould, Hansen, Hanson, Harp, Harper, Harrington, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Keller, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Meyers, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Peck, Phillips, Poff, Poulsen, Ramirez, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Swysgood, Thoft, Thomas, Vincent, Wallin, Whalen, Williams, Winslow, Mr. Speaker.
Total 84

Noes: Asay, Cobb, Giacometto, Grinde, Peterson, Raney, Switzer.
Total 7

Excused: Campbell, Daily, Glaser, Grady, Hannah, Moore, Pavlovich, Pistoria, Quilici.
Total 9

Absent or not voting: None.
Total 0

HB 6, Senate amendments, concurred in as follows:

Ayes: Addy, Asay, Bachini, Bardanouve, Bradley, Brandewie, D. Brown, J. Brown, Bulger, Cohen, Compton, Connelly, Corne', Darko, DeMars, Devlin, Donaldson, Driscoll, Eudaily, Fritz, Gilbert, Gould, Hansen, Harper, Harrington, Hayne, Hoffman, Holliday, Iverson, Jenkins, Jones, Kadas, Keenan, Kennerly, Kitselman, Koehnke, Lory, McCormick, Manuel, Menahan, Menke, Mercer, Miles, Miller, Nathe, Nelson, Nisbet, O'Connell, Patterson, Peck, Peterson, Phillips, Poff, Poulsen, Ramirez, Raney, Rapp-Svrcek, Ream, Rehberg, Roth, Russell, Sales, Sands, Schye, Simon, Smith, Spaeth, Squires, Stang, Stratford, Strizich, Swift, Swysgood, Thoft, Thomas, Vincent, Wallin, Whalen, Williams, Winslow, Mr. Speaker.
Total 81

Noes: Cobb, Cody, Giacometto, Grinde, Hanson, Harp, Keller, Meyers, Switzer.
Total 9

Excused: Campbell, Daily, Glaser, Grady, Hannah, Moore, Pavlovich, Pistoria, Quilici.
Total 9

Absent or not voting: Ellison.
Total 1

HB 73, Senate amendments, concurred in as follows: 38

SENATE BILL NO. 335

INTRODUCED BY MAZUREK, CRIPPEN, DEVLIN, RAMIREZ

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR SPEEDY RESOLUTION OF QUESTIONS OF LAW AND PROCEDURE PRESENTED IN TAX CASES APPEALED TO THE STATE TAX APPEAL BOARD FROM COUNTY TAX APPEAL BOARDS OR THE DEPARTMENT OF REVENUE; AMENDING SECTION 15-2-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND ~~A RETROACTIVE~~ AN APPLICABILITY ~~DATE~~ PROVISION."

WHEREAS, many questions arise in tax cases with respect to the validity of a constitutional provision, statute, or rule of the Department of Revenue or the State Tax Appeal Board prior to the time when the parties are ready for a hearing on the merits before the State Tax Appeal Board; and

WHEREAS, the section that allows for a petition for interlocutory adjudication of questions of law, section 15-2-304, MCA, provides for determination of legal questions by the District Court only in the event that both parties to the controversy, namely the taxpayer and the Department of Revenue, agree, and experience has shown that such agreement is rarely achieved in practice; and

WHEREAS, failure to determine questions of law and procedure at an early date often compels the taxpayer to submit to a costly, lengthy, and avoidable procedure before

the State Tax Appeal Board, which also adds to the burden of cases pending before the State Tax Appeal Board, and early resolution of these issues might reduce the costs, save time, and reduce the burden on the State Tax Appeal Board.

THEREFORE, the Legislature of the State of Montana finds it appropriate to amend the procedure for petitions involving interlocutory adjudication of questions of law and procedure by the District Court to reduce the expense and delay suffered by taxpayers, increase economy, and clarify the procedures now existing for the resolution of tax disputes.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 15-2-304, MCA, is amended to read:

"15-2-304. Petition for interlocutory adjudication. (1) (a) ~~At--the--time-of-filing~~ EITHER PARTY, WITHIN 30 DAYS OF THE FILING OF AN ANSWER TO an appeal before the state tax appeal board, ~~the--taxpayer,---in---an---appeal---from---a determination--of--the--department-of-revenue,-or-either-the taxpayer-or-the-department,-in-an-appeal-from-a-decision--of a--county--tax--appeal--board,~~ may file a petition for an interlocutory adjudication under 15-2-305. The petition may be filed with the district court:

(i) in the first judicial district;

(ii) in the county in which the taxable property is

REFERENCE BILL

located; or

(iii) in cases not involving property taxes, in the county where the taxpayer resides or has his principal place of business in the state.

(b) The petition must raise all questions RAISED BY THE PLEADINGS involving the interpretation of a constitutional provision, a statute, or a rule ~~that--xist-at the-time-of-filing~~ WITHIN 30 DAYS OF FILING AN ANSWER TO the appeal with the state tax appeal board.

(2) After a proceeding has commenced before the state tax appeal board but before arguments have been heard, the parties to the proceeding may petition a district court to make an interlocutory adjudication as provided under 15-2-305. A petition for such adjudication shall be signed by each party to the proceeding.

(3) ~~One~~ In a petition under subsection (1) or (2), one party shall be designated as the petitioner~~,~~ and every other party shall be designated a respondent. The court may in its discretion grant such a petition if it appears that the issues presented involve the interpretation of a constitutional provision, a statute, or ~~regulation~~ a rule and do not require the hearing of evidence to be resolved and that the controversy would be more expeditiously resolved by such adjudication."

NEW SECTION. Section 2. Effective date. This act is

effective on passage and approval.

NEW SECTION. Section 3. Applicability TO PENDING ACTIONS -- NOTICE. ~~This--act~~ THE RIGHT TO PETITION FOR INTERLOCUTORY ADJUDICATION applies ~~retroactively,-within-the meaning--of--1-2-109,--to--taxable--years--beginning---after December--31,--1984~~ TO ALL ACTIONS PENDING BEFORE THE STATE TAX APPEAL BOARD ON [THE EFFECTIVE DATE OF THIS ACT], WHERE THERE HAS BEEN NO PREVIOUS DISTRICT COURT ACTION. PETITIONS UNDER THIS SECTION MUST BE FILED WITHIN 90 DAYS AFTER NOTICE FROM THE STATE TAX APPEAL BOARD OF THE RIGHT TO PETITION. THE STATE TAX APPEAL BOARD SHALL GIVE NOTICE OF THE RIGHT TO PETITION FOR INTERLOCUTORY ADJUDICATION TO THE PARTIES IN PENDING CASES, AS SOON AS PRACTICABLE AFTER [THE EFFECTIVE DATE OF THIS ACT].

-End-